

Claim 1 calls for, in pertinent part, a package comprising: a container ... with a spout extending upward and inward from an upper portion of a main body and topped with an upwardly and outwardly flared portion terminating in a rim defining a container opening, a closure. . . and sealing elements including an annular sealing flange extending downwardly and inwardly from [an] end wall closure and having an outer sealing surface which engages an inner sealing surface on the flared portion of the container, and an annular upper portion of the inner surface of the skirt inclined downwardly and outwardly relative to the outer surface of the annular sealing flange to form with the annular sealing flange an upwardly converging annular gap into which the rim of the container is wedged as container engaging members on the closure and closure engaging members on the container engage.

Montgomery discloses a package in which an annular flange 32 extends upward from a lip 30 on the neck 16 of a container. This annular flange 32 is molded to extend axially as shown in Figure 3. It is deformed upwardly and outwardly upon entering a gap formed between the downwardly and inwardly extending surface 38 on an annular inner skirt 36 of the closure and the downwardly and inwardly directed surface (no reference character) on the projection 40 on the inner surface of the outer skirt of the closure. This annular flange 32 takes a permanent set in this outwardly flared direction so that when the closure is removed from the container and reapplied, this annular flange engages the underside of the projection 40 preventing the container from being fully lowered onto the container neck, thereby providing an indication that the container has been opened.

While the annular flange 32 is said to seal against the inner surface 38 of the inner skirt 36 during initial application and against the lower surface of the projection 40 when subsequently applied, Montgomery does not teach the arrangement called for in Claim 1. More particularly, the container of Montgomery does not have a spout which extends upwardly and inwardly as called for in Claim 1. More importantly, while the outer surface of the inner skirt 36 extends downwardly and inwardly at 38, the upper surface of the projection 40 extends parallel to that surface on the inner skirt and not downwardly and outwardly to form an upwardly converging annular gap into which the rim of the container is wedged. Thus, in this configuration, Montgomery does not anticipate Claim 1.

As for the second position of the closure in Montgomery relative to the container after the closure has been removed and replaced, as shown in Figure 5, the projection 40 does not form "an annular sealing flange extending downwardly and inwardly from the **end wall** of the closure". Also, the outer skirt of Montgomery does not extend outward and downward from a periphery of the end wall of the closure. Furthermore, the annular flange 32 is not wedged into an upwardly converging annular gap between the projection 40 and a downwardly and outwardly inclined inner surface of the downwardly and outwardly extending skirt. As shown in Figure 5 of Montgomery, the annular flange 32 forms an interference with the projection 40 which prevents fully seating the closure on the container upon reapplication. As shown in Figure 5 and as indicated at Montgomery, column 4, lines 55-57, the annular neck flange 32 seals against the lower portion of the projection 40, but it is not wedged into any upwardly converging annular gap as called for in Claim 1.

As Montgomery discloses a package with a different configuration which operates in a different way to achieve a different result, it does not anticipate Claim 1.

Claims 2-4, 10 and 11 all depend from Claim 1 and are therefore patentable over Montgomery for the same reasons. Furthermore, Claim 10 calls for the sealing elements to further include an annular sealing member on one of the lower end of the inner surface of the skirt above the container engaging members and the main body of the container above the closure-engaging members but below the spout sealing against the other. This is the seal 55 formed by the bead 57 (see Figure 2) on the lower portion 59 of the inner surface 27 of the skirt above the threads 31 sealing against the cylindrical upper portions 7 of the main body 5 of the container above the threads 9. No comparable elements are taught or even suggested by Montgomery. Accordingly, Claim 10 further patentably distinguishes over Montgomery.

Claim 11, which depends from Claim 10, calls for the annular sealing member to be on the lower portion of the inner surface of the skirt, and therefore, it also further patentably distinguishes over Montgomery.

Claim 12 is an independent claim which calls for, in pertinent part, a container with an upwardly and inwardly extending spout terminating with a rim, a closure having an end wall and a skirt extending outward and downward with container engaging members adjacent a lower end of an inner surface of the skirt which engage

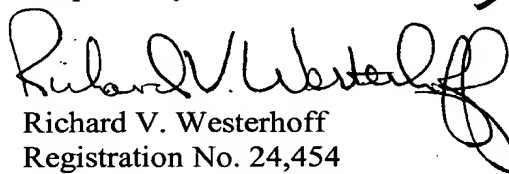
closure engaging members on the container, and sealing elements including a first sealing element forming a seal between the container and the closure adjacent the container opening, and a second seal comprising an annular sealing member on one of the lower portion of the inner surface of the skirt above the container engaging members and on the main body of the container above the closure engaging members but below the spout which seals against the other. Thus, Claim 12 calls for a seal at the top of the container and a seal between the lower portion of the skirt and the main body of the container below the spout but above the container enclosure engaging members (*e.g.*, threads). As discussed above in connection with Claim 10, Montgomery does not teach or suggest such an additional seal, and therefore, cannot anticipate Claim 12.

Claim 13 depends from Claim 12 and is therefore patentable over Montgomery for the same reasons.

Claims 5-9 have not be rewritten as they depend from Claim 1, which as has been discussed, is patentable in its present form.

In view of all of the above, reconsideration and allowance of the application as now presented is respectfully solicited.

Respectfully submitted,



Richard V. Westerhoff
Registration No. 24,454
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
Attorney for Applicant

(412)566-6090



VERSION TO SHOW CHANGES MADE

In the Specification:

Rewrite the opening paragraph at page 1, lines 4-6, as follows:

Cross Reference to Related Application: commonly owned, concurrently filed design patent application serial no. 29/146,737 entitled "CONTAINER", now Patent No. Des. 463,982 issued on October 8, 2002 [and identified by attorney docket number 035373-00103].